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**From:** Calli, Rosemary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E17C62EB477B48CFA42C0CEDD631C005-HALL, ROSEMARY]  
**Sent:** 11/28/2017 7:23:53 PM  
**To:** Parker, Christopher [Parker.Christopher@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Speir, Jeffrey [speir.jeffrey@epa.gov]  
**CC:** Thomas McGill (Mcgill.Thomas@epa.gov) [Mcgill.Thomas@epa.gov]; Philip Mancusi-Ungaro [Mancusi-Ungaro.Philip@epa.gov]  
**Subject:** FW: EPA oversight - quick summary

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**From:** Hurl, Kathy  
**Sent:** Tuesday, November 28, 2017 2:01 PM  
**To:** Hicks, Matt <Hicks.Matthew@epa.gov>; Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Cc:** Groman, Hazel <Groman.Hazel@epa.gov>  
**Subject:** EPA oversight - quick summary

Please forward to those who were on the call but I did not copy here.

Per my action from this morning's call I have looked at the MOA's MI and NJ signed with EPA.

Both have language regarding EPA oversight including:

General responsibility

- I.B.(3) savings clause - NJ MOA
- 8) Program review and oversight – MI MOA
- IV. B. EPA oversight of state program

Other oversight listed in one or both:

- Compliance monitoring and enforcement
- Termination or waiver of the review of categories of permit applications – EPA need only send written notice
- Review procedures – permits and waivers of review
- Enforcement oversight – either joint with the state, or independent and not waiving our right (this includes maintaining lead agency status on pending actions prior to assumption)
  - Includes clause EPA may request the opportunity to review any compliance and enforcement records the state may have.
- Requirements and process to keep the state/tribe informed of content and meaning of federal statutes, regs, standards, policy decisions etc that affect the state program. – state must then be consistent and no less stringent than these changes)
- Annual report requirements
- Coordination on mitigation banking

The regs specifically state:

233.13 (b) The Memorandum of Agreement shall set out the State and Federal responsibilities for

program administration and enforcement. These shall include, but not be limited to:

(1) Provisions specifying classes and categories of permit applications for which EPA will

waive Federal review (as specified in section 233.51).

(2) Provisions specifying the frequency and content of reports, documents and other information which the State may be required to submit to EPA in addition to the annual report, as well as a provision establishing the submission date for the annual report. The State shall also allow EPA routinely to review State records, reports and files relevant to the administration and enforcement of the approved program.

(3) Provisions addressing EPA and State roles and coordination with respect to compliance monitoring and enforcement activities.

(4) Provisions addressing modification of the Memorandum of Agreement.

#### **§ 233.16 Procedures for revision of State programs.**

There is a bit here but specifically this is a catch all provision here regarding oversight:

(e) Whenever the Regional Administrator has reason to believe that circumstances have changed

with respect to a State's program, he may request and the State shall provide a supplemental Attorney General's statement, program description, or such other documents or information as are

necessary to evaluate the program's compliance with the requirements of the Act and this part.

#### **§ 233.20 Prohibitions.**

No permit shall be issued by the Director in the following circumstances:

(b) When the Regional Administrator has objected to issuance of the permit under section 233.50

and the objection has not been resolved. Basically when the permit violates the (b)(1) guidelines or because of 404(c) or:

(d) If the Secretary determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would

be substantially impaired.

#### **§ 233.31 Coordination requirements.**

(a) . . . The Regional Administrator shall then have the time provided for in section 233.50(d) to comment upon, object to, or make recommendations.

#### **§ 233.35 Issuance and effective date of permit.**

(a) If the Regional Administrator comments on a permit application or draft general permit under

section 233.50, the Director shall follow the procedures specified in that section in issuing the permit.

All of subpart F

Kathy Hurld

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